

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #13	CCRB Case #: 201609209	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/26/2016 11:45 PM	Location of Incident: Southeast corner of Dumont Avenue and Autumn Avenue	Precinct: 75	18 Mo. SOL 4/26/2018	EO SOL 4/26/2018	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/03/2016 12:38 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafal Korycki	01607	952946	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Denisha Pierre	12632	930398	PBBN SU
2. SGT Ian Scheinblum	05075	941140	MN Narcotics

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafal Korycki	Abuse: PO Rafal Korycki stopped an individual.	
B.POM Rafal Korycki	Abuse: PO Rafal Korycki frisked an individual.	
C.POM Rafal Korycki	Force: PO Rafal Korycki used physical force against § 87(2)(b)	
D.POM Rafal Korycki	Force: PO Rafal Korycki used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) a staff member of § 87(2)(b), filed a complaint on behalf of § 87(2)(b) with the Internal Affairs Bureau on October 26, 2016, generating log number 16-38226. The complaint was received by the CCRB on November 3, 2016.

On October 26, 2016, at approximately 11:45 p.m., § 87(2)(b) was walking home with an unidentified male on Dumont Avenue in Brooklyn, with a gun he found next to a nearby McDonald's on Linden Boulevard in his right jacket pocket. When § 87(2)(b) was between Lincoln Avenue and Autumn Avenue, Police Officer Rafal Korycki of Patrol Borough Brooklyn North Anti-Crime stepped out of a car, leaving Police Officer Denisha Pierre and Sgt. Ian Scheinblum in the car. PO Korycki stopped the unidentified male, asked him about why § 87(2)(b) had run away, and frisked his pocket, then ran after § 87(2)(b) when he realized the pocket contained only a cell phone (**allegations A and B**). § 87(2)(b) started to run away but immediately slipped on the wet ground and fell, and the gun fell out of his pocket. He stood up and began to run again without picking up the things that fell. After he had gotten five to seven feet farther, PO Korycki wrapped his arms around him from behind and tackled him to the ground, turned § 87(2)(b) onto his stomach and handcuffed him, then punched § 87(2)(b) two or three times in the right eye (**allegation C**). When PO Korycki stood up, he stepped on § 87(2)(b)'s handcuffed hands, cutting his finger (**allegation D**). § 87(2)(b) was taken to the 75th Precinct stationhouse and charged with resisting arrest and two counts of criminal possession of a weapon in the second degree (BR 18). § 87(2)(g), § 87(4-b)

There was no video footage of this incident.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation as a result of § 87(2)(b)'s arrest.
- As of January 25, 2017, no notice of claim has been filed in regard to this incident (BR 19).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b)
- PO Korycki has been a member of the service for four years and has had four other CCRB allegations pled against him in three cases. § 87(2)(g)
 - An allegation of physical force was pled against him in CCRB 201403956 that was administratively closed.

Potential Issues

- The investigation could not identify the male who was walking with § 87(2)(b) whom PO Korycki admitted to stopping and frisking. § 87(2)(b) could not provide the individual's name or address, and PO Korycki did not obtain his name or identification during the stop.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)

Allegation A: Abuse of Authority: PO Rafal Korycki stopped an individual.

Allegation B: Abuse of Authority: PO Rafal Korycki frisked an individual.

§ 87(2)(b) testified that he was eating in McDonald's on Linden Boulevard in Brooklyn before the incident and noticed a man he had seen around the neighborhood was also there, but he did not know the man's name or where he lived (BR 01). After § 87(2)(b) left McDonald's and started walking home, he found a handgun on the ground in an empty lot. Soon after, he ran into the man he had recognized again and they walked together. The man stopped and cut through an alley to get home before § 87(2)(b) noticed the officers' car.

PO Korycki testified that when the officers were next to § 87(2)(b) and the unidentified male, he observed a bulge on the right side of the unidentified male's jacket (BR 02). He suspected the male may have a weapon, but he could not see the outline of a specific weapon, nor could he articulate how large the bulge was during his interview. § 87(2)(b) ran away, then PO Korycki exited the vehicle and approached the unidentified male without first speaking to the other officers. PO Korycki asked the male questions about why § 87(2)(b) had run away but he refused to answer. PO Korycki frisked the male's right torso where he observed the bulge and the male's ankles. The bulge was a cell phone, so PO Korycki allowed him to leave then started to run after § 87(2)(b).

Sgt. Scheinblum testified that PO Pierre slowed the car near § 87(2)(b) and the unidentified male so that the officers could observe them, but he did not notice anything suspicious about the unidentified male except that both he and § 87(2)(b) were walking quickly (BR 03). One of the officers, possibly Sgt. Scheinblum, asked the males to stop through the car window because of the bulge the officers observed on § 87(2)(b). The unidentified male stopped and § 87(2)(b) began to run. Sgt. Scheinblum asked the other officers if they saw the bulge on § 87(2)(b) but the officers did not have any conversation about the unidentified male. Without saying anything to the other officers, PO Korycki exited the vehicle and approached the unidentified male. Sgt. Scheinblum had not given any orders to PO Korycki and he could not hear the conversation PO Korycki had with the male, nor did he see whether PO Korycki patted him down because PO Pierre continued driving next to § 87(2)(b) after PO Korycki got out of the car. Sgt. Scheinblum thought that after § 87(2)(b) started running, PO Korycki stopped speaking to the other male and ran after § 87(2)(b).

PO Pierre testified that while she was driving slowly next to § 87(2)(b) and the unidentified male, she did not notice anything suspicious about the unidentified male (BR 04). After the officers had been driving slowly next to them for about a minute, PO Korycki got out of the car without saying anything. As soon as he stepped out, § 87(2)(b) began to run and PO Pierre followed him in the car. She could not see where PO Korycki or the other male went or what they were doing.

No stop and frisk report filed by PO Korycki on October 26, 2016 or October 27, 2016 was located (BR 05 and BR 20). PO Pierre prepared a stop and frisk report for § 87(2)(b) only.

A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct. Patrol Guide Procedure 212-11 (BR 06). An individual having been observed in a high crime area with an innocuous bulge taken together with that individual's flight cannot justify the stop of the individual. People v. Holmes, 81 N.Y.2d 1056, 1058 (1993) (BR 07). An officer must have reasonable suspicion that he/she is in danger by virtue of the individual being armed in order to frisk that individual. While a waistband bulge is telltale of a weapon, a pocket bulge could be caused by any number of innocuous objects. People v. DeBour, 40 N.Y.2d 201, 221 (1976) (BR 08).

§ 87(2)(g)

Allegation C: Force: PO Rafal Korycki used physical force against § 87(2)(b)

Allegation D: Force: PO Rafal Korycki used physical force against § 87(2)(b)

§ 87(2)(b) testified in his sworn statement that he was carrying a handgun he had found moments earlier in an empty lot in his right jacket pocket. As he was walking home on Lincoln Avenue in Brooklyn, he noticed a car driving slowly and heard someone in the car tell him to stop walking. He ignored the person and continued walking. After he had walked another block, he heard someone get out of the car and turned to see that PO Korycki, identified by his actions, had stepped out of the car; § 87(2)(b) saw the handcuffs on PO Korycki's belt and realized it was a police officer, so he began to run because he did not think the officers would believe that he had just found the gun. He slipped immediately and the gun fell out of his pocket. He stood up and ran five to seven feet before PO Korycki wrapped his arms around him from behind and tackled him to the ground. PO Korycki turned § 87(2)(b) onto his stomach and handcuffed him, then said, "You wanna run from me?" and punched him two or three times in his

right eye. PO Korycki stood up and stepped on § 87(2)(b)'s handcuffed hands before sitting him up and propping him against the wall. In an earlier phone statement, § 87(2)(b) testified that PO Korycki tackled him to the ground, punched him two or three times in his right eye, then handcuffed him and sat him up against a wall, not mentioning that PO Korycki stepped on his hands (BR 09).

§ 87(2)(b) the FDNY EMT who treated § 87(2)(b) at the 75th Precinct stationhouse just after the incident, testified that § 87(2)(b) had a small cut on one of his pinky fingers and a bruise over his right eye (BR 10). § 87(2)(b) told § 87(2)(b) that he tripped and fell on his eye; he did not say how his finger was injured. § 87(2)(b) never said anything to § 87(2)(b) about an officer punching him or using any force against him.

PO Korycki testified that after he stepped out of the car, § 87(2)(b) threw a brown paper bag and then started running away. After PO Korycki frisked the unidentified male, he ran after § 87(2)(b). Before he reached § 87(2)(b) he noticed a magazine and bullets on the ground. A block later, he saw that § 87(2)(b) had turned around and was running towards him, with Sgt. Scheinblum following him about four or five car lengths behind. PO Korycki decided to tackle § 87(2)(b) because he had run away from the officers, was holding his right side which PO Korycki thought indicated § 87(2)(b) was carrying a gun, and had thrown a bag when he first noticed the officers. PO Korycki wrapped his arms around § 87(2)(b) with their chests touching and tackled him to the ground. PO Korycki told § 87(2)(b) to give him his hands but he refused and clutched his waist with his hands. PO Korycki, believing § 87(2)(b) to be armed, punched him in the face once. § 87(2)(b) then gave PO Korycki his hands and PO Korycki handcuffed him. PO Korycki did not step on § 87(2)(b)'s hands or see another officer do so.

Sgt. Scheinblum testified that when the officers' car was parallel to § 87(2)(b) and the unidentified male, he saw that § 87(2)(b) had a heavy, L-shaped, handgun-sized bulge in his right jacket pocket. After § 87(2)(b) began to run, PO Pierre continued driving next to § 87(2)(b) with Sgt. Scheinblum in the passenger seat. About a block later, § 87(2)(b) fell and a pistol magazine fell out of his pocket and ammunition spilled onto the ground. Sgt. Scheinblum told PO Pierre to look at the magazine and the bullets and then he called for additional units, exited the vehicle, and pursued § 87(2)(b) on foot to the next corner. At one point during the chase, § 87(2)(b) doubled back and began running towards PO Korycki, who had turned onto the street § 87(2)(b) and Sgt. Scheinblum were on. PO Korycki punched § 87(2)(b) once in the face – Sgt. Scheinblum could not see specifically where the punch landed, but saw that § 87(2)(b)'s right eye was swollen after the incident – then took him to the ground. § 87(2)(b) did not resist any further after PO Korycki punched him in the face, and Sgt. Scheinblum could not describe how PO Korycki touched him to take him to the ground. Once they were on the ground, § 87(2)(b) allowed PO Korycki to handcuff him. Sgt. Scheinblum did not see PO Korycki step on § 87(2)(b)'s hands and he was not aware of any injury to § 87(2)(b)'s fingers.

PO Pierre testified that when she was driving slowly next to § 87(2)(b) and the unidentified male, she saw an L-shaped bulge the approximate size of a gun in the right pocket of § 87(2)(b)'s jacket. She followed § 87(2)(b) in the car after he began to run, and she saw him trip and a magazine fell out of his pocket. She told Sgt. Scheinblum to get out of the car and stop him, and Sgt. Scheinblum exited the car and began to chase § 87(2)(b). PO Pierre saw § 87(2)(b) throw a gun onto the ground before parked cars blocked her view of him and Sgt. Scheinblum. She stopped the car and walked to the sidewalk where § 87(2)(b) was

handcuffed and sitting up, though it had been only seconds since she saw him running. She did not see an officer take him to the ground, use any force against him, or handcuff him.

§ 87(2)(b)'s medical records from § 87(2)(b) on § 87(2)(b) state that § 87(2)(b) told the physician's assistant that he "was running from the police and was punched once" (BR 11).

The narrative of the ambulance call report filed by § 87(2)(b) says that § 87(2)(b) stated that he had pain to his right eye as a result of a fall (BR 12). The medical treatment of prisoner report filed by PO Pierre states that § 87(2)(b) "sustained swelling to right eye while resisting arrest" (BR 13). The command log also states that § 87(2)(b) had an abrasion to his right eye when he arrived at the 75th Precinct stationhouse (BR 14).

The TRI report filed by PO Korycki states that PO Korycki only used a hand against § 87(2)(b) to defend himself, because § 87(2)(b) was fleeing, to overcome resistance or aggression, and because § 87(2)(b) was armed with a weapon (BR 15). The photo attached to the TRI shows swelling to § 87(2)(b)'s right eye.

§ 87(2)(b)'s property vouchers created by PO Pierre include vouchers for a pistol, a magazine, and six cartridges (BR 16).

§ 87(2)(g)

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide Procedure 221-01 (BR 17).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date